

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Christopher Fournier

v.

Civil No. 08-cv-338-JD
Opinion No. 2010 DNH 124

Warden, Northern New Hampshire
Correctional Facility

O R D E R

Christopher Fournier seeks relief from his state court conviction and sentence pursuant to 28 U.S.C. § 2254. The Warden has moved for summary judgment. Because of delays due to appointed counsel, no objection to the motion for summary judgment has been filed.

Counsel initially was appointed to represent Fournier for purposes of the summary judgment proceeding on August 4, 2009. That attorney's motion to withdraw was granted on October 5, 2009. Attorney Harry Batchelder, who is presently representing Fournier, was appointed on October 9, 2009. Attorney Batchelder filed a motion for an extension of time to respond to the motion, which was granted on December 10, 2009, setting the deadline for Fournier's response on January 11, 2010.

On January 8, 2010, Attorney Batchelder again sought an extension of time to respond to the motion for summary judgment.

Attorney Batchelder filed an affidavit in which he explained that the illness of his wife had prevented him from completing Fournier's response within the time allowed. He asked for an additional twenty-one days to file the response. The motion was granted on January 12, 2010.

On February 19, 2010, Attorney Batchelder filed a motion to extend the deadline for Fournier's response for forty-five days. In support, Attorney Batchelder stated that he had been able to meet with Fournier but required additional time for further meetings with Fournier. Attorney Batchelder also represented that he had been called to serve as a venireman in a New York court. The extension was granted on February 25, 2010.

The deadline for Fournier's response passed in mid-April without a response being filed. During that time, Attorney Batchelder filed a motion for approval of expenses related to the case. On May 17, 2010, Attorney Batchelder requested another forty-five day extension of time to file Fournier's response. In support, Attorney Batchelder explained that the response was delayed because he was waiting to get transcripts which he expected by the end of May. He also explained that the response would require an extensive amount of time and effort and that his responsibilities as appointed counsel in a criminal case in New

York would limit the time available to work on Fournier's case. That motion was granted on May 18, 2010.

The deadline for filing Fournier's response passed in mid-July without a response being filed. On July 20, 2010, Attorney Batchelder again requested an extension of time, until August 27, 2010, to file Fournier's response. In the motion, Attorney Batchelder states that he has experienced personal problems for the past three months that have interfered with his ability to attend to Fournier's case and that those problems now have been resolved, leaving him fully able to discharge his responsibilities in this case. He also states that he is seeking assistance from another attorney who is more knowledgeable about habeas corpus proceedings.

The New Hampshire Attorney General's Office, who represents the Warden, has assented to all of the motions for an extension of time. Attorney Batchelder states that he was unable to ascertain Fournier's view about the extension because he does not have a working telephone number for Fournier. According to the docket in the case, Fournier notified the court on January 13, 2010, that he was incarcerated at the New Hampshire State Prison for Men in Concord. The docket does not indicate a change since that time. Therefore, it appears that Fournier is available by telephone at the prison.

Conclusion

In the interests of justice, given the history of delays, it is important that this case move forward expeditiously at this time. Therefore, the request on behalf of the petitioner for an extension of time to file a response to the Warden's motion for summary judgment (document no. 49) is granted with the following requirements:

(1) **On or before July 30, 2010**, Attorney Batchelder shall file a certification with the court that he has contacted Fournier to explain the present circumstances in the case, including that the response is due on August 27, 2010, and

(2) No further extensions of time to file the response will be granted at the request of Attorney Batchelder.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

July 22, 2010

cc: Harry C. Batchelder, Jr., Esquire
Stephen D. Fuller, Esquire
Elizabeth C. Woodcock, Esquire